are interesting. Very few cases could arise in which knowledge or easy opportunity to acquire it is absent within reasonable territorial limitations. Cf. 6 COLUMBIA LAW REVIEW 349. The right to the trade name becomes in effect a monopolistic right, and the courts in protecting it go so far as to restrict the right that every man has to use his own name as he will. The element of fraud seems to be weakening before the right of property. In the case of *Siegert* v. *Gandolfi*, N. Y. L. J. Dec. 15, 1906, the court per Wallace, J., said, "when the name of a place or a locality has been so long applied as a descriptive designation of the product of some manufacturer there, that it has acquired a secondary meaning, and has come to be generally recognized in trade as signifying his particular product, it becomes so far his property that a business rival cannot appropriate and use it to induce purchasers to buy a product made elsewhere, or even made at the same place."

THE THEORY OF EXEMPLARY DAMAGES.—It is almost universally conceded that where a tort is committed in a wanton spirit there should be an increased recovery. *Emblen* v. *Myers* (1860) 6 H. & N. 54; *Fay* v. *Parker* (1873) 53 N. H. 342. There is a division, however, in the courts as to the measure of these damages. In some courts compensation merely for wounded feelings and mental anguish is given. *Bixby* v. *Dunlap* (1876) 56 N. H. 456; *Lucas* v. *Michigan Cent. Ry.* (1893) 98 Mich. 1; *Murphy* v. *Hobbs* (1884) 7 Cal. 541. Others instruct the jury fully to compensate the plaintiff for all the usual items of damage, and then to look at the offense and see whether this sum sufficiently represents its magnitude; and if it does not, the jury may in its discretion add such sum as will do so. *Haines* v. *Schultz* (1888) 50 N. J. L. 481; *Day* v. *Woodworth* (1851) 13 How. 363, 371; *King* v. *Root* (N. Y. 1830) 4 Wend. 113, 139. But the phrase is often added "as are necessary for an example to deter others." *Taylor* v. *Church* (1853) 8 N. Y. 452; *Brown* v. *Swineford* (1878) 44 Wis. 282; *Goddard* v. *Grand Trunk Ry. Co.* (1869) 75 Me. 202; *Porter* v. *Seiler* (1854) 23 Pa. St. 424.

It is this last statement, which implies that exemplary damages have some connection with the wrong done to society, that has brought the rule as to exemplary damages into disrepute with many courts. *Spear* v. *Hubbard* (1826) 4 Pick. 143; *Riewe* v. *McCormick* (1881) 11 Neb. 261; and cases cited supra. These cases point out that when damages are awarded as a deterrent, it is admitted that the plaintiff as an individual has no title to them; hence the court takes from one individual and gives to another what does not belong to the latter, which is unjust, if not unconstitutional. It is also stated that if the theory of exemplary damages is based upon punishment in the public interest, the defendant, in those cases in which he is also punishable criminally, is vexed twice for the same cause. *Austin* v. *Wilson* (1849) 4 Cush. 273. This argument has led certain jurisdictions to refuse exemplary damages where the wrong is one upon which a criminal prosecution may be founded. *Wabash Printing Co.* v. *Crumrine* (1889) 123 Ind. 89; *Huber* v. *Teubee* (D. C. 1879) 3 McArth. 484. Yet it has been clearly pointed out that if punitive damages are double punishment in the case of a wrong which is criminally punishable, it is because of an inconsistency of such damages

with a civil action, and that this inconsistency exists quite as much in the case of a wrong not criminally punishable. *Brown* v. *Swineford* (1878) 44 Wis. 282. If by the giving of exemplary damages in the former case the defendant is twice punished by the public where he should be punished but once, in the latter case he is once punished where he should not be punished at all. A recent Kentucky case, awarding exemplary damages regardless of previous criminal proceedings, *Doerhofer* v. *Shewmaker* (1906) 97 S. W. 7, illustrates the true solution of the difficulty by a repudiation of the "deterrent" theory itself. The principle there laid down, that though "vindictive damages operate by way of punishment, they are allowed as compensation for the injury complained of * * * because the injury has been increased by the manner in which it was inflicted" makes such damages thoroughly at one with theories of private recovery, and obviates the fear of double punishment which has led other courts into inconsistency.

It is believed that this position of the Kentucky court is well within the earlier cases. That originally exemplary damages were not awarded as a deterrent to others, is plain. In the manorial courts damages were awarded specifically for the disgrace attaching to one whose rights had been infringed; 2 P. & M., Hist. of Eng. L. 536; and while in the King's Court damages for shame were not awarded as such, yet in practice this element was not neglected; 2 P. & M. Hist. of Eng. L. 536, n. 5 and 6. The jury were chancellors to determine the amount of damages from the equities of the case, *Hixt* v. *Goats* (1613) 2 Rol. Abs. 703 pl. 15, and exemplary damages were given without interference from the court. *Lord Townsend* v. *Hughes* (1677) 2 Mod. 150. But the growing consciousness that damages were to be assessed by some rule, *Ash* v. *Ash* (1695) Comb. 357, forced the courts to assign reasons when upholding large verdicts rendered under the jury's ancient prerogative, which were obviously just. *Huckle* v. *Money* (1763) 2 Wils. 205. In the case last cited exemplary damages were sustained on the ground that in a most flagrant, high-handed manner, one of the fundamental rights of a citizen had been invaded. It is apparent that damages over and above actual loss were given for the violent infringement of the right, just as nominal damages are given where a right has been infringed and no damage suffered. *Ashby* v. *White* (1706), Salk. 19; *Seneca Road* v. *Railroad* (N. Y. 1843) 5 Hill. 170, 175. Damages paid for the infringement of a right as such are, of course, a punishment from the standpoint of the offender, and, as they operate to deter others from committing like offences, *Merest* v. *Harvey* (1813) 5 Taunt. 442, this has, by a confusion of ideas, come to be regarded as one of the purposes of exemplary damages. *Coryell* v. *Colbaugh* (N. J. 1791) Coxe 77. But the best considered modern cases recognize that these damages are given as compensation by way of atonement for the infringement of the private right. *Fry* v. *Bennett* (N. Y. 1855) 4 Duer 247, opinion of HOFFMAN, J.; *Chiles* v. *Drake* (Ky. 1859) 2 Metc. 146.

QUASI-CONTRACTUAL ACTIONS AFTER RESCISSION OF CONTRACT.—Rescission is a term constantly encountered in the law of contracts in confusingly diverse connections. Cf. Harriman, Contracts §§ 397, 400; Bishop, Contracts §§ 809 et seq. It is used, in the first place, to desig-